Calendar No. 1998

82D CONGRESS
2d Session

SENATE

REPORT
No. 2073

NATIONAL EMERGENCY LABOR DISPUTES ACT

REPORT

OF THE

COMMITTEE ON LABOR AND PUBLIC WELFARE

TO ACCOMPANY

S. 2999

A BILL TO AMEND THE LABOR MANAGEMENT RELATIONS ACT, 1947, AS AMENDED, SO AS TO PROVIDE A MORE EFFECTIVE METHOD OF DEALING WITH LABOR DISPUTES WHICH AFFECT THE NATIONAL SECURITY

JULY 2 (legislative day, JUNE 27), 1952.—Ordered to be printed

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1952

COMMITTEE ON LABOR AND PUBLIC WELFARE

JAMES E. MURRAY, Montana, *Chairman*

LISTER HILL, Alabama	ROBERT A. TAFT, Ohio
MATTHEW M. NEELY, West Virginia	GEORGE D. AIKEN, Vermont
PAUL H. DOUGLAS, Illinois	H. ALEXANDER SMITH, New Jersey
HUBERT H. HUMPHREY, Minnesota	WAYNE MORSE, Oregon
HERBERT H. LEHMAN, New York	IRVING M. IVES, New York
JOHN O. PASTORE, Rhode Island	RICHARD M. NIXON, California

WILLIAM H. COBURN, *Clerk*

SUBCOMMITTEE ON LABOR AND LABOR MANAGEMENT RELATIONS

HUBERT H. HUMPHREY, Minnesota, *Chairman*

MATTHEW M. NEELY, West Virginia	ROBERT A. TAFT, Ohio
PAUL H. DOUGLAS, Illinois	WAYNE MORSE, Oregon
JOHN O. PASTORE, Rhode Island	IRBING M. IVES, New York

JACK BARBASH, *Staff Director*
MERTON C. BERNSTEIN *Counsel*
MARJORIE M. WHITTAKER, *Clerk*

CONTENTS

Calendar No. 1998

82D CONGRESS } SENATE { REPORT
2d Session } { No. 2073

NATIONAL EMERGENCY LABOR DISPUTES ACT

JULY 2 (legislative day, JUNE 27), 1952.—Ordered to be printed

Mr. HUMPHREY, from the Committee on Labor and Public Welfare, submitted the following

REPORT

[To accompany S. 2999]

The Committee on Labor and Public Welfare, to whom was referred the bill (S. 2999), to amend the Labor Management Relations Act, 1947, as amended, having considered the same, reports favorably thereon with amendments, and recommends that the bill, as reported, do pass.

PURPOSE OF THE BILL

This bill is designed to provide the Government with a comprehensive and flexible plan for averting stoppages of work and operations resulting from labor disputes which may shut off supplies or services essential to the national security and for contributing to their settlement. This bill would supplement not supplant the present provisions of title II of the Labor Management Relations Act.

As reported, this bill is the outgrowth of extensive hearings in which testimony was sought and procured from outstanding Government, labor, and business leaders and others with rich experience in industrial relations. Four separate and comprehensive revisions of the bill were made before the committee was satisfied that it was ready for reporting.

It provides for—

(1) The issuance of a Presidential proclamation when a labor dispute threatens to create a national emergency;

(2) Recommendations by the President for continuance of production and settlement of the dispute;

(3) Emergency boards to hear the disputants and recommend terms of settlement;

(4) Seizure by Executive order subject to congressional veto by concurrent resolution within 10 days of a seizure order;

S. Repts., 82-2, vol. 4——77

(5) Termination of seizure within 60 days of an order unless continued by concurrent resolution;

(6) Changes in wages, hours, and working conditions during seizure within the limits of recommendations of the emergency board;

(7) No change in union security that exceeds maintenance-of-membership without consent of parties during Government operation;

(8) Continued production during Government operation;

(9) Just compensation to owners of enterprises of which possession is taken; and

(10) A compensation board to determine just compensation for which some standards are prescribed; its award would be appealable to the Court of Claims.

It should be emphasized at this point that this enumeration does not set forth a static procedure or time table. As more fully described under "Analysis of the bill," the various provisions can be used singly or in conjunction with variations in timing as the particular occasion demands.

A POLICY FOR NATIONAL EMERGENCY DISPUTES

Under the Wagner Act the keystone of national labor policy was the encouragement of collective bargaining. The process of collective bargaining serves to substitute the exchange of ideas and propositions for outright contests of economic strength over inflexible alternatives. The presentation of grievances, ideas, and arguments by both unions and managements helps create an area of understanding. Within the area of remaining disagreement, trading and partial concessions, agreements to reopen questions and the like have made possible contracts acceptable to the parties.

An integral part of the collective bargaining process is the right to disagree. In the normal case, each side has an ultimate sanction to enforce its will or to exact concessions. For labor, it is the right to strike. For management, it is the right to refuse improvements, to insist upon the status quo until agreement is reached.[1a]

Labor and management alike have endorsed these principles and the Wagner Act embodied them.

These factors are the purported basic principles of the Labor Management Relations Act of 1947, which states, in part:

> Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.
>
> * * * * * * *
>
> It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining * * *.

In the normal situation, labor disputes and the right to strike fulfill a healthy purpose. They lead to agreements upon terms which the

[1a] The employer has the additional right to hire permanent replacements for economic strikers.

parties are willing to accept after the exhaustion, if necessary, of all legal means of compelling acceptance or concession from the other side.

In our resilient economy most such disputes, even when they interrupt production and services, do not unduly inconvenience the public at large. The very availability of the right to strike and the right to withhold improvements tends to minimize such disruptions.

In peacetime, absent severe economic dislocations such as a depression, there are practically no work stoppages which would create hardships so extreme as to constitute a "national emergency." As an example a widespread stoppage of some substantial duration on the railroads would create critical shortages of civilian goods sufficient to result in such an emergency. A short strike would usually not be of emergency proportions because most communities have some reserve supplies of food, fuel, and other necessary consumer and industrial commodities. Stoppages confined to a few cities or a region would not reach serious proportions, particularly if only of short duration. Where only a limited area is affected, alternate methods of transportation can counteract the results of a brief railroad tie-up and alleviate those of a moderately extended one.

Few industrial stoppages, even if in basic industries and of substantial length, have a profound effect upon national stability or well-being. For example, a coal strike usually does not have an immediate effect upon industrial production or home fuel supplies. In this industry, there is usually a substantial stockpile above ground, and strikes have almost always been settled when reserves dwindle to the near-danger point. Recent coal strikes which evoked substantial public reaction have all occurred in a crisis period.

Stoppages in local public utilities may have a sharper effect upon a given locality and may more quickly jeopardize vital community services and activities. However threatening such situations may become, and they usually have been settled before serious damage results, they do not have an impact beyond a relatively small area and hence cannot be regarded as national emergencies.

1. THE NATURE OF EMERGENCY DISPUTES

It is recognized, however, that war, the threat of war, and conversion from a war economy create national and international emergencies.

In such periods, there are some few major or critical disputes which can cripple or seriously endanger the economy and security of the Nation. It has not been sufficiently recognized that it is the existence of an "emergency" that has converted such labor disputes into national-emergency disputes. The threat of stoppage cannot of itself result in an emergency but can only give rise to apprehension of one.

Even a major labor dispute in a time of emergency will not necessarily create critical national hardship if it erupts into a stoppage of work or production. Other factors, such as the stockpile of materials and alternative supplies and services, may mitigate the effects of an actual strike so as to enable the Nation to endure it without serious consequences. Most stoppages do not have the immediate effect of sharpening an existing emergency to the point at which the national security is imperiled.

A comparatively rare combination of circumstances operates to produce a situation in which a work stoppage imperils the national

security. Section 211 of the bill was rewritten so as to make clear that it would be applicable only in cases of extreme emergency and critical danger. Only a very few labor disputes have the potential effect of rendering the Nation helpless or seriously weakened in combating some external threat or internal crisis.

One of the principal procedures made available by the bill, Government possession and operation of private enterprises, is an extreme remedy. The committee was reluctant to recommend its use and recognizes that it has serious potentialities for abuse. However, there are situations of such gravity and urgency that seizure must be available for the preservation of the national security. Only under such circumstances would we sanction its use and then only with the safeguards provided by this bill.

The frequency and ease with which injunctions have been issued in recent years has tended to insensitize many to the inappropriateness of injunctions in labor relations. They engender resentment and disrupt relationships, as they become more common. Their prohibitions are expanded. Unions have bitter experience that injunctions are antiunion weapons which have been used oppressively. With great reluctance, however, we included a provision for preventing stoppages during Government operation in the interest of national security.

When national security is imperiled by a stoppage in a critical enterprise or plant it is obvious that the usual prerogatives of labor and management must yield to overriding public needs. In such circumstances, a stoppage must be averted or terminated without recourse to the normal means of resolution.

It must be recognized that in such situations the parties to a dispute do not operate under the same pressures which are conducive to collective bargaining. On the one hand, public opinion is averse to a strike. This severely limits a union's bargaining power and thereby strengthens management's ability to resist union demands. Complete implacability on the part of management may also result in adverse public reaction—but its translation into pressure upon employers is more difficult to achieve.

It takes two, at least, to make a strike. Both union and management must disagree before a labor dispute will, or threaten to, erupt into a stoppage. At such a time, some set of forces must serve as a substitute for the stresses which foster collective bargaining. Both sets of parties must be subject to pressures which impel them to bargain and to settle. Whatever device or set of devices is to be used, it must operate upon both parties with equal force. Neither side can be given an advantage or possibility of preferred position which will encourage action designed to precipitate Government intervention rather than to avoid it. The procedure must be capable of immediate and effective application and also provide safeguards against abuse.

S. 2999 is designed to meet this problem of national emergency disputes (1) with expedition, (2) with a minimum of interference with the parties, (3) by making Government intervention onerous and yet maintaining a maximum of fairness to all disputants, and (4) with the double aim of maintaining critical production and services and the resolution of disputes through collective bargaining.

2. THE METHOD OF S. 2999; A COMPARISON WITH TAFT-HARTLEY PROVISIONS

The present provisions of Title II of the Taft-Hartley Act have two basic shortcomings: one-sidedness and inflexibility. An injunction against strikes operates only against the union disputant. This device weakens the collective bargaining position of a labor organization only. The net effect of this is to encourage an employer not to bargain to the same extent that he would if he were faced with the normal sanction of the strike. Nothing in the act now replaces the strike so as to insure employer bargaining.

It is contended that the 80-day injunction period is a cooling off period. But, the 60-day notice provision of section 8 (d) is supposedly designed to operate as a cooling off period during which the parties must bargain without resort to strike. Supposedly this is balanced off by a prohibition against lock-outs for the 60 days. However, the lock-out is not a practical economic weapon in a nondeflationary period, for an employer can obtain continued production on the terms and conditions existing when demands for a new or modified contract are made. In a time of increased living costs, an employer needs no more than this ability to continue production under existing wage rates. A ban on lock-outs would only be significant in a deflationary period when there is need for and some feasibility of reducing labor rates. Such a period cannot be expected to exist during a time of emergency, which has always been characterized by inflationary tendencies.

Apparently the injunction is considered by some to be a sure means of averting a work stoppage. That certainty is illusory. The present Taft-Hartley procedure is cumbersome and slow.

It begins with the appointment of a board of inquiry which reports the facts and contentions of the parties. Not until the report is issued can the President instruct the Attorney General to apply for an injunction. And then a district court must make independent findings that the injunction should issue. This procedure is totally inappropriate to situations in which uninterrupted work is imperative. For example, any stoppage in the basic steel industry is expanded into the loss of several days' or weeks' production because of the length of time required to reheat furnaces and reestablish full operation.[1]

In comparison, S. 2999 permits seizure and injunction, if necessary, practically simultaneously with a Presidential proclamation of emergency. If such speed is not required the President can begin with the proclamation and follow with seizure and injunction at any moment when the urgency of the situation dictates.

On the record of Taft-Hartley in operation it is clear that the injunctions delay and discourage bargaining.

In the 1948 report of the Federal Mediation and Conciliation Service it was observed that—

> provision for an 80-day period of continued operations, under injunctive order of a court, tends to delay rather than facilitate settlement of a dispute. Parties

[1] In nine cases under these provisions seven injunctions were issued. The time elapsed from appointment of the board of inquiry to issuance of an injunction was 14, 11, 11, 4, 5, and 6 days. The average elapsed time was 8 days.

unable to resolve the issues facing them before a deadline date, when subject to an injunction order, tend to lose a sense of urgency and to relax their efforts. In most instances efforts of the Service to encourage the parties to bargain during the injunction period. with a view to early settlement, fall on deaf ears.

As a matter of experience bargaining usually resumes toward the end of the injunction period.

The fixity of the present emergency procedure makes Government action so predictable as to enable a party to gauge the advantages of precipitating the statutory procedure. Moreover, the end point of the Taft-Hartley injunction procedure is the employee ballot on the employer last offer. It has been observed that employers tend to make that offer lower than the real offer which it would finally make to procure settlement. The procedure encourages an employer to keep some improvement in reserve.

Bargaining is certainly not encouraged by the present law and probably is discouraged by it.

Nor is public opinion brought to bear upon the disputants. The Taft-Hartley board of inquiry makes no recommendations which might become the focus of public opinion. That board only reports the problems and positions of the parties. Those reports have received little publicity and are not an effective means of mobilizing public opinion.

S. 2999 provides for an emergency board which investigates and makes recommendations. In this respect, the measures proposed by Senators Maybank,[2] Monroney,[3] and Case [4] are the same.

The procedure provided by S. 2999 is initiated by a Presidential proclamation which describes the emergency and the dispute and calls upon the parties to continue work and operations. At this stage the President by informal means may persuade the parties to settle or at least continue operations while negotiating.

This might be an effective means of procuring continued production, which would only be possible if both parties are satisfied that the other is bargaining. When the proclamation is issued, the President need only report to Congress. No other formal action is necessary. He can appoint a board or hold off. He might seize and procure an injunction if a stoppage is imminent. The parties could not be sure. At each step they would probably be desirous of averting additional Government action.

Under present provisions, the President, once he starts, cannot stop. The law provides a timetable for the parties to read and count upon. To a lesser extent the other proposals under consideration by the committee share this defect of inflexibility.[5]

The present law requires employees to labor under conditions which cannot be altered for the period of the injunction. Other proposals have essentially the same feature.

It would be unjust to compel workers to continue at work solely for the public good and at the same time visit upon them the sole burden of continuation. The bill provides for limited adjustment of wages and working conditions. As pointed out under the later analy-

[2] S. 2594, 82d Cong., amendment June 4, 1952–C; S. 3233 has the same substantive provisions.
[3] S. 2594, 82d Cong., amendment June 4, 1952–D.
[4] S. 2594, 82d Cong., amendment June 5, 1952–A; S. 3322 has the same substantive provisions.
[5] The comments on "other proposals" do not apply to the other bill applicable only to the current steel dispute which the committee is reporting at this time.

sis, even such changes would not be possible absent recommendations from an emergency board, whose appointment is not mandatory. It is to be expected that any increase granted would be calculated to maintain pressure upon the union disputant to bargain and settle. These factors of uncertainty would encourage a union to avoid Government intervention. But, at the same time, employers would have similar causes to seek voluntary resolution of the dispute rather than surrender to the uncertainties of Government action.

The prospect of Board recommendations would lead both parties to attempt to agree on terms before the Board recommends a settlement which might interfere with the realization of their aims.

Employers for their part would be faced with the loss of control of their enterprise if seizure is decided upon. This pressure is slight, for seizure alone is normally nominal and does not affect revenue or profits. Indeed, it insures continued operations. But, the bill provides a formula for ascertaining just compensation for any seizure which lasts longer than 30 days. These criteria might very well reduce profits. To what extent that would happen could only be known after seizure is ended. This feature would operate as a strong inducement to bargaining and discouragement of inviting Government intervention.

The bill guarantees active participation by both Congress and the Executive.

Other measures proposed either omit this type of provision or are not sufficiently strong in so providing. In a true national emergency the full prestige and powers of the Presidency and Congress should be brought to bear. This focuses the attention of the public and the parties upon the gravity of the situation. Public scrutiny will tend to insure responsible action by both management and labor. The fact that the principal agencies of Government take an immediate concern in the dispute will stimulate public interest in the conduct of the parties and in any recommendations issued by an emergency board.

Both the President and Congress will share responsibility for the role Government plays in the dispute. This will stimulate cooperation, minimize mere partisan debate, and lend prestige to any official action taken. By insuring the mobilization of both executive and legislature, the parties will labor under additional uncertainties as to what form Government intervention will take. Uncertainty as to what action will eventuate and whether it will be favorable or unfavorable to either party will create additional incentives to both parties to settle. Irresponsible action by a party will be inhibited by the fear that the governmental and public reaction will be translated into measures unfavorable to that disputant.

This flexibility and adaptability of official process is in sharp contrast to currently available procedures under which the parties can anticipate what the Government will do and how their interests will be affected.

The bill combines expedition, flexibility, fairness and safeguards against abuse. It provides that the full prestige and authority of both the President and Congress will be brought to bear so as to assure necessary production and resolution of the dispute. S. 2999 is designed to secure settlements by making Government intervention

undesirable without being oppressive. Emphasis is placed upon reinvigorating collective bargaining rather than authoritarian compulsion. These factors, we believe, represent a balanced policy for national emergency disputes.

ALTERNATIVE PROPOSALS

In the last few decades, whenever public attention has focused upon labor problems, there has been a revival of three basic proposals, each with innumerable variations. They are: (1) compulsory arbitration; (2) a ban on so-called industry-wide bargaining; and (3) subjecting unions to the antitrust laws. The latest manifestations of these proposals have been considered by the committee.

1. Compulsory arbitration

When parties to a labor dispute fail to agree, it is proposed, "agreement" should be imposed upon them by a third party, the Government. Such a plan implies a total lack of faith in any alternative method of stimulating the parties to agreement.

As indicated earlier in this report, collective bargaining is believed to be efficacious because it tends to create understanding between labor and management and satisfies the parties that they have done as well as their economic position enabled them to do. In emergency situations the normal sanctions available to labor and management are not so readily available or are delimited in some way by law. Normal inducements to bargain are absent or diminished.

To the extent that it is possible, it seems desirable to encourage bargaining by the substitution of some new set of pressures for those normally brought to bear.

Under a scheme of compulsory arbitration, and more specifically S. 3322, the primary substitute is an imposed settlement. This specific proposal would begin with a board which investigates and makes recommendation within 30 days. When the board reaches a decision, its formula is to be observed by the parties for 120 days.

This plan is not susceptible of any variation to meet the needs of different situations. It is a blueprint of such certainty and definiteness that the parties will know what to expect. Actually the principal incentive for agreement is the uncertainty which precedes the board's report. However, both sides may tend to feel that it can do better or strengthen its position by getting a report than by agreeing in advance.

Once the report is issued there are two principal alternatives. The parties may be so impressed with the fairness and advantageousness of the Board's report as to accept it. It would be unduly cynical to rule out this possibility entirely. But, it would be exceptionally naive to expect this to occur with any frequency.

More often than not the recommendations will be viewed by the parties as more favorable to one than the other. Under the circumstances the party favored will settle for only the recommendations or a formula substantially like it. The alternative is the imposition of the entire package. Little effective bargaining can be expected.

The apparent choice between agreement or the imposition of the "suggestions" is close to nonexistent.

The period of mandatory "acceptance" is circumscribed. While the prescribed conditions are in force the parties may find them less

distasteful than they thought. This is more likely in the case of noneconomic issues, e. g., form of grievance procedure or the check-off. Acquaintanceship will not breed affection on economic issues, the effects of which the parties can anticipate with fair accuracy.

The committee believes that this proposal, and others like it for labor courts and permanent Government arbitral bodies, would be totally inconsistent with our industrial institutions and would fail in their purpose.

Even less area for choice and bargaining would be left the parties under this measure than it indicates. That itself is too little. It is true that in the area of negotiations whose disruption may develop into what is regarded as a national emergency dispute there is bound to be some governmental interference.

We earnestly believe that governmental interference should be at a minimum so that the terms on which a dispute is settled approximates what the parties would have done for themselves under normal conditions. This maximizes the acceptability of the outcome, thereby providing a measure of stability to the relationship.

S. 3322 places reliance on the one factor of compulsion. If it fails to achieve agreement by that single force—the procedure is at an end and the dispute and potential disruption remain.

The history of industrial relations in this country is in total opposition to compulsory arbitration. Few if any principles evoke the same unity and degree of opposition from both labor and management. It can hardly flourish in such hostile soil.

A lesson is to be learned from countries, such as Australia, which have used compulsory arbitration in labor disputes. Initial use of this procedure shows a tendency to expand so that what is initially used for a limited class of cases is gradually applied to all. Not only does the Government set wages, hours, and working conditions for a few key plants or industries, it proceeds with mandatory measures in all labor relations. This has led to price fixing and minute supervision of business. What has been described has become the standard operational procedure even in peacetime. The extent and subjects of control far exceed what this country has tolerated in the midst of war.

Government regulation, the setting of standards of conduct, as this country has known it for several decades has been confined to limiting excesses of conduct. This is a far different thing from Government control which is plenary and intimate. Any measures which have been proven to contribute to such a climax must be rejected as incompatible with our free system.

S. 3322 provides that the plan it embodies will come into operation only after the present provisions of the Taft-Hartley Act have been exhausted. It thereby is susceptible to the same objections as the Taft-Hartley prescription.

2. Ban on industry-wide bargaining

A ban on industry-wide bargaining is a chimerical cure for a fictional condition.

This recommended proscription was suggested, without the specification of details, by the National Association of Manufacturers, the United States Chamber of Commerce, and a vice president of the United States Steel Corp.

Legislative proposals allegedly designed to accomplish this end now and in the past are directed not to industry-wide bargaining, but multiemployer bargaining.

Industry-wide bargaining is susceptible of two meaningful definitions. It may mean bargaining by all of the employers simultaneously or by a common representative with a labor organization. (In our economy this concept has never been extended to bargaining by such a group with the union representatives of all of their employees.) Even this limited "industry-wide" bargaining does not exist.

It may be stated categorically that in no industry do all of the employers, or even the overwhelming majority, bargain as a group. In the coal industry, there is the division among anthracite and bituminous and northern and southern operators. The automobile, packinghouse, rubber, oil, and steel producers bargain either individually or in groups which are far less comprehensive than the whole industry involved.

Another possible definition is bargaining by a dominant individual company or group with the results accepted or followed in substantially the same form by the smaller companies in an industry. Apparently this is the conception many have of what takes place in the steel industry. As a vice president of United States Steel observed the 1950 steel "settlement" had unequal effect on various companies. It is a matter of record that the steel strike over pensions in 1949 was settled company by company on different terms. And the first to settle were not the mammoth "leaders," but a few medium-size concerns.

There are certain patterns of wage setting tending toward uniformity which cannot be reached by legislation of this sort. Just as there is price "leadership" there is wage leadership. This phenomenon may occur within an industry. Quite commonly it is prevalent in communities in which there is one or a few dominant enterprises, which set wage standards even in businesses which are totally dissimilar. These economic patterns have developed and continue without regard to whether the leaders or followers are unionized.

It may be true that a national union or locals are unwilling to accept substantially less from one company than a competitor of that company agreed to. Similarly, employees are loath to exceed what has been granted by competitors. In practice any equivalence which does result is approximate only and may take different forms, with shift differentials substituting for paid holidays and the like.

The argument in favor of this legislation is cast in the following terms: if there is no industry-wide bargaining there cannot be industry-wide strikes. The absence of industry-wide bargaining demonstrates that this argument is incorrect. A recent occurrence points the error. The petroleum industry has resisted even multiemployer bargaining so that at least 200 major companies bargain individually. Yet, within the past few months there was a group of simultaneous strikes which shut down almost all of these operators. Interestingly, after the Wage Stabilization Board announced the limits for a settlement for one employer, all of the remaining employers settled on essentially the same terms.

Under existing law the individual employer has the sole option of bargaining alone or in combination with other employers. He may enter or leave such a group at any time that a new contract can be

negotiated. Section 8 (b) (1) (B) of the National Labor Relations Act makes it an unfair labor practice for a union to restrain or coerce an employer in his choice of a bargaining agent. Section 8 (b) (4) (A) makes it an unfair labor practice for a union to strike or to engage in a secondary boycott to force an employer to join an association.

It is quite clear that multi-employer bargaining frequently is the choice of employers particularly among smaller enterprises. Understandably so. Such bargaining provides protection against strikes while competitors are in operation which would subject employers to "whipsawing." Obviously a nonstruck employer can achieve important business advantages while competitors are shut down.

Of course, multi-employer bargaining is often desirable to unions because it tends to establish uniform standards. The economy has a legitimate interest in this result also. Usually it is highly desirable. In most cases, even where there is group bargaining there is some individual bargaining to resolve special problems peculiar to an individual employer. Indeed, most multi-employer agreements provide for such additional terms.

Multi-employer bargaining is often desirable to unions because it tends to set uniform standards, with respect to wages, hours, and working conditions. But this is desirable as well to the employer who pays decent wages and who feels he shuold not suffer competitively because he does not exploit his employees. The principle of uniform minimum standards has been recognized in public policy too through the enactment of minimum wage and hours laws. In effect this public policy says: Competition is fine but it ought not to extend to the point where workers are paid below what is required to maintain a minimum standard of health and decency.

In point of fact there is abundant evidence to prove that even where multi-employer bargaining prevails, there are wide variations in earnings. These variations are due to differences in workers output in managerial efficiency none of which are seriously effected by multi-employer bargaining.

Yet, the sole legislative proposals made today (H. R. 6497 and 6498) which were introduced in May 1952 would set stringent limits upon permissible bargaining. They would limit bargaining to single employers and local unions except that two or more employers could bargain together if their installations were within a metropolitan area, and the employees involved would be fewer than 500.[6]

Proposals of this sort normally include a ban upon direction of or participation in negotiations by parent unions or cooperation among locals. Funds of one union, even with the same international could not be used to assist another striking local.

Those who proposed this legislation strangely do not urge concommitant action to cure the "curse of bigness" in industry. For if big unions cause large conflicts, doesn't it follow that big enterprises also contain the roots of large and serious industrial upheavals? The statement of the proposition demonstrates the mere formalism of schemes of this sort. Large scale industrial enterprise is one of the

[6] Needless to say serious complications could arise in administering such a provision. For instance, three employers in the proper area execute a 2-year contract. At the time of execution they have a total of 350 employees. One's operations expand so as to bring the total of all to 550 after about 6 months under the agreement. The contract contains an exclusive recognition clause and also a union security clause. The validity of each clause depends upon the appropriateness of the unit covered by the contract. Do employers and unions become guilty of unfair labor practices as the five hundred and first employee is hired and/or do the contracts become unenforceable?

bastions of American strength. So also is well-developed free unionism and integral and healthy part of our industrial and economic democracy.

We can only deduce that when put forward as a solution for emergency disputes a ban upon industry-wide bargaining is a meaningless slogan. Apparently it is designed by some to have popular appeal because it superficially seems to contain a plausible solution. This scheme can only result in the atomization of unions and the isolation of locals to the detriment of labor's bargaining power and to the extinction of many unions.

The proposals to ban industry-wide bargaining in the present context suffer from several serious defects. First of all the effect of these proposals on minimizing emergency disputes is remote and highly speculative. Second, the only concrete result of such a ban would be to weaken the bargaining power of unions. Third, the proposals would substitute a Government dictum for collective bargaining. Under Government intervention is unjustifiable because no showing has been made that multiemployer bargaining is generally harmful to the public interest. The weight of the evidence suggests on the contrary that it has frequently stabilized labor-management relations in what would otherwise be chaotic situations.

3. Application of the antitrust laws to labor organizations

Proposals to subject unions to the antitrust laws take many forms. They vary from a simple statement that the antitrust laws shall apply to comprehensive definitions of what combinations and objectives of unions shall be unlawful. The antitrust statutes provide for injunctions and treble damage suits.

The stated basis for proposals of this type is the contention that unions have grown too large and are "monopolizing" the labor supply. What then could be more reasonable, it is argued, than to restrict union "monopolies" in the same fashion as business combinations?

Whatever cogency this argument has is on the surface. It ignores entirely the basic and important differences between business and union organizations and the economic purposes and results of their activities.

First, it should be observed that that is no evidence that big unionism is responsible for difficult labor disputes. There is an implicit assumption, without proof of any kind, that small unions tend to act more responsibly than large unions. There is no doubt that some business interests find it advantageous to deal with small and weak unions.

Apparently there is an attempt to analogize business competition to union competition, despite the fact that present labor legislation seeks to minimize union competition, e. g., section 8 (b) (4) (D) of the Taft-Hartley Act which supposedly controls jurisdictional disputes. The proponents of this plan do not stress the desirability of union competition despite the fact that the preservation of competition is the keystone of the antitrust laws.

In passing, we would note that the antitrust laws are generally considered to be a very incomplete answer to the problem of business combination in restraint of trade. At best, they operate to discourage blatant price-fixing, market sharing and other obvious practices. No claim is made that these statutes effectively preserve competition or impede its elimination.

Even with these shortcomings, the courts have held that the Sherman Act was declaratory of common law on restraints of trade so that its general terms were given content and meaning. At that, the administration of the act and those which amended it, has been marked by litigation and uncertainty.

How much more complicated it will be to seek to apply these measures to unions when there is an almost complete lack of precedent to give significance to the very general language of the Sherman Act in this new context.

The courts have been able to impose the sanctions of those laws to unions when it is found that they are not acting for union objectives, but combine with employers for the purpose of excluding sellers from a market and price-fixing, e. g., *Allen-Bradley Co.* v. *Local Union No. 3, IBEW,* 325 U. S. 797 (1945). This demonstrates that when unions go beyond their legitimate functions in the opinion of the courts, legal sanctions will be inflicted. This is not to imply that the holding of the cited case was precisely correct in the opinion of the committee. We only point out that the courts will act against what they deem union action that exceeds normal trade-union purposes.

What is the nature of the alleged "labor monopoly"? Unions do not control the labor supply. They do not agree to provide given numbers of employees on definite terms. Even under the closed shop this was so. The outlawing of the closed shop made it all the more clear that unions do not manipulate pools of labor—withholding or granting units of labor in an effort to exploit the laws of supply and demand.

Nor are the characteristics of prices and wages the same or similar. Most prices fluctuate with cost and market conditions. This variability is totally inappropriate to wages and is not to be found. Workers must have some idea of their income. And, indeed, employers must have certainty about their labor costs.

And of course unions cannot set wages unilaterally in the way that an enterprise or group of enterprises in a monopolistic position sets prices. A union must bargain on wages. A business enterprise if it is in a sufficiently strong position can simply announce prices.

It may be argued that a ban on cooperation among locals and their international unions would tend to eliminate uniformity of wage rates in industries or local areas. As any student of wages knows, infinite variations in rates and methods of computing wages is typical of American industry. This is all the more true because of the relative lack of standardization of job content.

Within a few industries there may be some uniformity of jobs and rates. This uniformity, it may be contended, penalizes the efficient producer and bolsters the laggard. A significant segment of American labor believes that competition in wage rates is undesirable as it tends to depress wages in bad times or is disruptive in inflationary periods as employers bid against one another for scarce labor. It is urged that the more efficient producers must rely upon their superior utilization of workers and other nonwage factors to gain competitive advantage. The committee finds merit in this view.

We have no alternative but to look upon the arguments in favor of applying antitrust laws as spurious. The necessary effect of such legislation would be to create doubt and uncertainty. In the field of labor-management relations such a condition leads to strife as parties attempt to exploit that uncertainty. They tend to construe ambigu-

ous and unclear laws so as to be most advantageous to themselves and press for their interpretation until some authoritative body rules against them. Until that happens the process of collective bargaining is wrecked or seriously impaired.

The application of the "antitrust" provisions of S. 3158 or H. R. 9697 or 9698, particularly the latter, would plunge the labor movement of the United States into a total war of law suits. These measures clearly favor employers and would encourage employer resistance to union demands whenever the law seemed to offer a means of defeating them. Such predictions are not fanciful. The 5 years of the Taft-Hartley Act, which is replete with ambiguities, has demonstrated that employers tend to litigate first and bargain later, if it is still necessary to do so.

If labor legislation is designed to eliminate strife by eliminating or at least subjugating unions, H. R. 9697 and 9698 are admirable means.

This committee believes that employers, employees and the public at large will be benefited by a calmer attempt to encourage collective bargaining. We do not counsel forging new weapons for one side or the other. To do so is to encourage tests of strength and weapons.

THE CURRENT STEEL DISPUTE—A CASE IN POINT

At this moment most of the basic steel industry is shut down by a strike. The controversy which gave rise to the strike first began in November 1951, almost 8 months ago. The length of this labor dispute, its severity and potentially grave consequences point to the necessity of a plan to deal with dislocations of this type, which, though rare, are formidable and dangerous.

The history of this dispute demonstrates the difficulty of considering legislation of general application in the broil of a current dispute. At the same time, it is fairly clear that the basic problems involved will not be given serious attention in the absence of compelling need.

In December 1950, the principal producers of steel and the United Steelworkers of American (CIO) agreed upon a wage increase of about 16 cents an hour pursuant to a wage reopening clause of then current contracts.[7]

At the end of January 1951 the newly constituted Economic Stabilization Agency and its Wage Stabilization Board "froze" wage rates as of January 25, 1951, and thereafter issued a series of regulations which modified the freeze in limited fashion. The regulations consisted of formulas beyond which wages and other compensation could not be adjusted.

On December 31, 1951, the collective-bargaining agreements in the basic steel industry were to expire. In conformity with the 60 day notice provisions of section 8 (d) of the Taft-Hartley Act, the USW (CIO) gave notice at the end of October 1951 of a desire to negotiate a new agreement.

Negotiations were slow in getting under way. The union, after informal approaches to the companies, presented its demands for new rates and conditions to the United States Steel Co. in early December. That company indicated a desire to study the demands, but made no counter-offer.

[7] The actual increase varied from company to company—16 cents was the approximate average increase.

The Union voted to strike at midnight December 31, 1951, when the contract was to end. On December 22, the President of the United States referred the dispute to the Wage Stabilization Board pursuant to Executive Orders 10161 and 10233. This was not the first dispute referred to the Board by the President. In addition to cases certified by the President the Board had accepted dispute cases voluntarily submitted by the parties. The latter type involved a commitment that the parties would be bound by the Board's decision. Cases certified by the President result in recommendations only. There was widespread public confusion on this point, due, in large part, to steel company literature and advertisements protesting the possible "imposition" of the union shop by the WSB.

In response to the President's request to defer the strike during the period of WSB consideration of the case, the union postponed it for a fixed time. It also put off the strike deadline twice thereafter to permit the Board to conclude its hearings and deliberations.

As dozens of companies were involved in the dispute, they combined for purposes of presenting their case to the Board. They established common headquarters in New York.

The Board appointed a 6-man tripartite panel to hear the parties present their case. Some 20 subjects were in dispute which could be further subdivided so that a total of about 100 issues was before the Board. Chief among these were a general wage increase, holiday pay, shift differential pay, Sunday pay, and union security.

The parties were heard over a period of many weeks. Some issues were withdrawn by agreement of the parties during the hearing. The panel summarized the contentions of the parties and the factual material submitted. This report was submitted to the WSB without recommendations.

The Board after considering the report and the record issued its recommendations on March 20, 1952.

Of the twenty-odd major issues involved, the Board's recommendations rejected three union demands in toto, suggested that the parties attempt to negotiate on 10, and contained affirmative proposals on those remaining. In no instance did the Board recommend the granting of a union demand in full.

The merits of the various emergency disputes bills have been considered against the background of the steel dispute. In fact, during 6 days of hearings, the Senate Labor and Public Welfare Committee heard from authoritative spokesmen of all of the parties at interest in that dispute.

To the extent that the steel dispute provides us with a case history of an emergency dispute, it is important that the committee appraise some of the controversial aspects of that dispute.

One finding which the committee will not make, nor do we deem it necessary that it be made at all, is whether the recommendations of the Wage Stabilization Board in the steel dispute were the best recommendations which could have been appropriately made. This committee will not constitute itself as a tribunal to reassess the facts and to remake recommendations. We do believe, however, from the extensive record before us that procedure followed in this dispute and the recommendations of the Wage Stabilization Board were not unreasonable. The reasons for this judgment we set forth in summary form below:

(1) *The allegedly unstabilizing effect of the Board's recommendations.*—There was not a single fact brought to our attention in the course of these extensive hearings which demonstrated in a convincing manner that the Board's recommendations, if put into effect, would be unstabilizing. There were, to be sure, sharp differences of opinions on the methods of making wage comparisons. This is no more than should be expected from an aggrieved party. The argument that the Board's recommendations would be unstabilizing was based principally upon the contention that they exceeded what was permissible under existing regulations. This contention was not substantiated and we feel that the Board, after hearing proof and argument from all parties in interest, is in the best position to determine what its own regulations allow.

(2) *Price and wage controls.*—A settlement of this dispute was made infinitely more difficult by the existence of price and wage controls. If price and wage controls had not been in operation, a settlement by the parties on their own power would have come forth more easily. In this case even if the parties had been able to conclude a bargain they would have had no certainty that their agreement was permissible under stabilization policies. More than that, the bargaining process was complicated by the differing contentions of the parties as to whether various demands made by the union were allowable under stabilization regulations. The record before the Board shows that this was a potent force operating against private bargaining. But these controls had been established by Congress on the conviction that they were essential to maintain economic stability and conformity to them was indispensable to a final agreement.

(3) *Price bargaining.*—Ostensibly the union and managements were bargaining over wages. Actually the outcome of the bargaining between union and managements had to wait on the outcome of a more crucial bargain—the bargain between the Government and the industry with respect to the price of steel. Here again, an element of stabilization policy complicated bargaining. It is clear as this report is being written that no bargain can be concluded until the price bargain is finally determined.

(4) *The disputes functions of the Wage Stabilization Board.*—There is nothing in the record which effectively contradicts the conclusion that the Wage Stabilization Board has been able generally to discharge the disputes authority granted it in a capable manner. If the test of effective administration of the disputes function is the avoidance of strikes, then the Wage Stabilization Board must be accounted successful in every case which it handled except the steel dispute. And even in the steel case the President of the United States was successful in holding back a strike through the voluntary acquiescence of the union for 100 days, or 20 days more than the statutory Taft-Hartley period, on the inducement that there existed a Government tribunal with authority to recommend a settlement.

(5) *The union-shop recommendation.*—There is no question that the union shop is a proper subject of collective bargaining between union and management and is consistent with public policy. The Labor-Management Relations Act of 1947, as later amended to make the union shop easier to negotiate by eliminating the requirement for a union-shop-authorization election, the amendment to the Railway Labor Act legalizing the union shop in railroad union-management

agreements, all suggest that the union shop is proper if the parties want it.

The issue in the steel dispute is much narrower than this, however. It is whether it is appropriate for a Government agency to recommend the union shop.

The majority of the committee felt that (*a*) the union-shop issue was within the framework of the dispute as submitted to it by the President of the United States under Executive Order No. 10233; (*b*) The public members initially proposed to the Board that the union shop should be referred back to the parties with the Board retaining jurisdiction if agreement were not reached. Industry members of the Board insisted that the Board recommend against the union-shop demand. The labor members insisted that the union shop be granted. Faced with these alternatives the public members accepted the labor members' alternative as the less unreasonable of the two.

Senator Morse, however, feels that under no circumstances should the Government put its force behind a recommendation which he feels would have the effect of compelling union membership.

Much has been said to the effect that recommendations of the WSB in a dispute are tantamount to a compulsory arbitration. The successful rejection of the WSB's steel recommendations is concrete evidence of the difference between recommendations and compulsory arbitration.

(6) *Tripartitism.*—It is difficult to see why this should have been an issue in the Wage Stabilization Board's handling of the steel dispute. There is nothing in the record to suggest that the recommendations would have been any better or any worse or that the recommendations would have been more acceptable if there had been an all-public board or a tripartite board weighted in favor of the public members. The plain fact is that the party to the dispute which feels it is aggrieved will always set up a clamor whether the recommendations emanate from a tripartite board or an all-public board.

(7) *Alleged bias of public members.*—There is not a shred of credible evidence in this record which can be used to substantiate a bias on the part of the public members in favor of labor. Indeed, the most reprehensible aspect of this dispute has been the reflection which it was found necessary to cast upon the integrity of the public members, in order to justify disagreement with the Board's recommendations. The malicious half-truth or half-lie, that several of the public members had been on the payroll of a union cannot be sufficiently condemned. This allegation was based solely on the fact that some of the public members had been arbitrators in labor-management cases. One member is the impartial chairman of a board which decides jurisdictional disputes. Employers contribute to defraying the expenses of that board which performs a function of value to both unions and management in the industry concerned. Of course, an arbitrator who renders a decision in a voluntary arbitration case upon the voluntary request of the union and management involved is paid by the union but he is also paid by management. It would be just as accurate or inaccurate to say that these same public members were on the payroll of industry, and indeed, the president of a corporation who echoed this charge must know that his own corporation has participated in such arbitration arrangements.

The record before us compels the conclusion that the outpouring of propaganda and scare advertisements before, during, and after the

Wage Stabilization Board's deliberations was not calculated to create an atmosphere in which the union and management could come to a settlement on their own. This propaganda, much of which was patently untrue, converted a labor-management dispute into a major social struggle. The processes of collective bargaining are difficult enough without the accompaniment of a hysterical chorus egging one of the parties on to battle.

The steel dispute has many meaningful implications for the handling of emergency disputes. The efficacy of any governmental plan for emergency disputes depends on the devoted service of people in public life. The barrage of invective which descended upon the public members of the Wage Stabilization Board has reduced the reservoir of people who will be willing to subject themselves to this sort of service. Those who do serve may be so cowed and intimidated that their usefulness is seriously impaired in any future dispute.

From the point of view of the unions the aftermath of the WSB recommendation has depreciated the value of public intervention. The conclusion can be drawn that any finding construed as favorable to a union can be discredited by an aggrieved party which has sufficient resources and persistence.

These are imponderables which no legislation can deal with. The best intentioned legislation will break down if one side or another feels that it can manipulate the results of Government intervention by tactics and stratagems which have nothing to do with the merits of the case.

We believe that S. 2999 as reported out of committee is an intelligent piece of legislation. It will be nullified however, if the climate of opinion converts the disputes between unions and managements into titanic class conflicts.

This consideration imposes a responsibility on the opinion makers, which includes Congressmen and Senators, not to contribute to the creation of an environment which makes settlement on the merits impossible.

SUMMARY

Few problems which face the United States present greater challenges than that of national emergency labor disputes. They must be treated so as to maximize the use of free institutions and the exercise of the rights of free men. To the extent that Government acts to ameliorate their consequences, that action should be designed to exploit and encourage the methods of a free society, not limit or extinguish them.

As in all matters, the Government must act in the interest of all with due respect and protection for the rights and well-being of minorities and individuals. It would be both indefensible and foolhardy to favor one class over another. The suppression of one dispute would then but breed others.

In the normal case free collective bargaining provides the healthiest and surest adjustments in labor-management relations. Overriding public interest demands some limitation of the rights of unions and management to precipitate stoppages when serious impairment of the national security would result. We deem it the function of such limiting legislation to provide alternative pressures upon the parties to stimulate bargaining not inhibit it. Any legislative proposal must be

so flexible that the parties to a dispute will not be able to anticipate the form and timing of Government intervention and turn it to partisan advantage. Pressure to bargain must operate equally upon the parties and not place the power or prestige of Government on either side. Expeditious action should be possible, coupled with safeguards against abuse.

We conscientiously feel that S. 2999 combines these desirable features.

As an alternative, compulsory arbitration is too greatly at odds with our free institutions to be feasible or desirable. Resort to compulsion is an index of exasperation and lack of faith in our traditional means of reaching social and economic adjustments. Such measures tend to overflow into related areas now free from regulation or in which only a minimum of control is now tolerated. There is no showing that such compulsion will contribute to the settlement of disputes after the Government steps out of the case, as the bill before us provides that it shall.

The second alternative of a ban upon industry-wide bargaining is unrealistic to the extent that the phenomenon does not exist. Current proposals would all but obliterate multi-employer bargaining which is the outgrowth, where it exists, of the economic needs of both business and unions. Most often it performs a useful function. No evidence has been offered to show a casual relationship between multi-employer bargaining and work stoppages which, because of the unsettled times in which they occur and the critical nature of the industry or plants affected, may adversely affect the national security.

Such a ban and application of the antitrust laws to unions seem primarily designed to weaken the bargaining power of labor organizations. Measures of this sort can hardly be expected to improve labor-management relations. Punitive legislation will only sharpen disagreement and create dangerous resentment. We find no merit in proposals which can only be construed as attempts to eliminate fights by tying a hand of one party behind his back.

The committee does not claim that this bill would solve all of the problems presented. We sought a means of strengthening the role of mediation and conciliation. This is a voluntary and informal process not susceptible of improvement by adding mandatory or formal features. We did not arrive at a method of improving mediation facilities or procedures. In any controversy mediation should be attempted and exhausted if possible before recourse to more formal procedures. The bill so provides. Beyond that we did not receive nor can we make further recommendations. This subject merits further consideration.

The committee earnestly believes that this measure represents the best compromise formula for permanent legislation that has been produced from bitter experience and widespread inquiry.

We recommend it as a fair measure for a free society.

ANALYSIS OF THE BILL

Section 1: Provides for the amendment of title II, the National Emergency portion, of the Taft-Hartley Act, by inserting additional provisions as follows: [1]

[1] Existing provisions of title II would remain in effect. The additions provide a series of alternatives to such existing provisions. Present secs. 211 and 212 are merely renumbered as secs. 216 and 217, respectively.

Section 211. When the President finds that an actual or threatened strike or lock-out "in a vital industry or plant" would create a national emergency by endangering the national security he shall issue a proclamation and call upon the parties to continue or resume work and operations.

Section 206 of the present Taft-Hartley Act applies to strikes and lock-outs "affecting an entire industry or a substantial part thereof" so as to "imperil the national health and safety." This new section would permit application of the new procedures to a unit smaller than a "substantial part" of an industry. This would meet the potential need of insuring production in one or a few plants producing critical items. On the other hand, it was intended that the provisions of the bill would not be readily available but should only be used in the most extreme and urgent situations. For this reason the terms "which affects the public interest" was replaced with "which seriously affects the security of the United States."

Section 212.[2] (a) Immediately upon issuing the proclamation, the President must inform Congress about the dispute. At that time or at any subsequent time he may make any recommendations for continuation of production and settlement of the dispute.

This provision was made mandatory rather than permissive as it was originally. The bill is designed to keep Congress informed at every step of the procedure and to have Congress share the responsibility for and authority to deal with the dispute.

(b) At any stage of the dispute, the President may recommend seizure of any enterprise or enterprises involved in the dispute. Originally, such a recommendation would be made only if there were an actual strike or lockout. It was deemed advisable to give the President sufficient authority to forestall any stoppage. This may be necessary in industries, such as steel, in which a slight interruption in production results in the loss of the production of many days or weeks because of technological factors. In addition, the President is not limited to a particular time or set of circumstances. He may seize before, immediately following, or a substantial time after a cessation of operations. The parties would not be able to count on any surely predictable action. If governmental action is predictable, parties will jockey to force action thought to be favorable to them. The removal or reduction of predictability is designed to remove or reduce such maneuvering. The uncertainty would tend to encourage settlements as the parties would not know in advance when or if they would be helped or hindered by Government action.

When the President recommends seizure he would have immediate authority to seize. But Congress would have 10 days from the submission of such a recommendation to it to veto or undo seizure. In its original form, the President could not seize until 5 days after making such a recommendation. Within that period Congress could have disapproved of the recommended seizure.

The committee feels that a congressional check upon seizure is desirable. However, it feels the amended version combines the desirable factors of speed of operation and congressional safeguard against what it believes improper seizure. Particularly in an industry such as steel, uninterrupted production is vital for the cooling of the furnaces results in the loss of weeks of full production.

[2] The change in sequence of sections within the bill has no substantive effect but was designed to put the steps provided by the bill in chronological order.

If the Congress disapproves of the initial recommendation of seizure any later seizure in the same dispute would have to be authorized by concurrent resolution beforehand.

Although it can be expected that mediation and conciliation will be attempted throughout the dispute, the bill specifies that the Federal Mediation and Conciliation Service shall continue to encourage settlement. At the suggestion of the Service's Director provision making the "Emergency Board," available as a mediator was eliminated.

The Government operating agency would be empowered to change wages, hours and working conditions only within the limits set by the Emergency Board's recommendations. Such changes could be partial and made at various stages of the dispute. Flexibility and uncertainty here would contribute to bargaining. A union would not know what to expect in such interim changes in terms and working conditions, which could vary from zero to 100 percent of the Board's recommendations. Note, however, that a Board need not be appointed in which case there would be a freeze for the period of seizure or until a Board was appointed and made recommendations. Employer parties to the dispute would not know what would be done at this juncture either. On both sides, pressure to settle would be generated.

The bill limits the extent to which changes in union security could be made during Government possession. No change in union security which goes beyond maintenance-of-membership [3] could be made during Government operation without the parties consent (i. e., each employer and union affected—not all parties need agree, in order to effect changes in some facilities). The language of this proviso is intended to make clear that in cases in which union security is an issue, other Board recommendations may be effectuated in whole or in part whether or not the conditions for a change in union-security terms are satisfied or not.

The original bill would have permitted changes in wages, hours, and conditions of employment in accordance with a concurrent resolution of Congress. It was concluded that the Congress would not be equipped for this type of task, which is close to adjudication and the provision was eliminated.

Specific provision is made for the convening of the Congress or either House if adjourned sine die or for more than 3 days. In a sense this is not necessary, because at the very outset of this procedure the President must submit a report to the Congress. In the original bill a report immediately after issuance of the proclamation was not mandatory. However, so as to leave no doubt that Congress must be in session during the threatened or actual emergency, this language was retained.

In the original bill, it was provided that the Norris-LaGuardia Act was to apply to the United States while using the procedures outlined

[3] Under this form of union security employees who are members of the union at the beginning of a contract period or who voluntarily join thereafter must maintain membership for the remainder of the contract term as a condition of continued employment. There are many variations on this basic theme. Many contracts provide for an escape period at the beginning or at some time during the contract term Employees who resign during the specified escape period are under no obligation to rejoin.

This form is to be distinguished from union shop contract provisions which require that all employees must be members of the union on or after a certain number of days following execution of the contract or the inception of employment as a condition of continued employment.

Under present provisions of sec. 8 (a) (3) of the National Labor Relations Act membership cannot be required of new employees until 30 days after they begin work. Loss of membership for any reason other than failure or refusal to tender initiation fees and dues uniformly required of all members may not be the basis for discharge under such agreements.

unless Congress by concurrent resolution provided otherwise in each case. In case of seizure this would have meant affirmative congressional action would be required as a prerequisite to procuring an injunction against a strike during Government possession, or after the issuance of a proclamation.

After experimenting with several different versions of this language and various injunction provisions, the committee decided that pressure should be exercised simultaneously on both sides of the dispute. To achieve that end, the committee concluded that an injunction should not precede seizure. It was felt that the sole purpose of abridging the right to strike would be overriding national interest. Under the circumstances, it would be most inequitable to enjoin a strike in favor of a private employer. For the limited emergency period, workers deprived of the right to strike should toil for the Nation as a whole.

Subsections (c) and (d) are consonant with this principle. The affirmative legal duty of a union not to strike or to call off a strike arises only after seizure is decided upon. This duty is to arise at the issuance of the seizure order rather than at the time of seizure because the former is easier to identify and isolate.

The duty not to strike, the availability of an injunction, and an injunction endure only so long as the Government is in possession. Government possession can terminate in the following ways:

(1) If Congress overrules initial Presidential recommendation by concurrent resolution;

(2) the original 60-day seizure runs out without renewal by concurrent resolution;

(3) the dispute is settled; or

(4) the President determines Government operation is no longer necessary (e. g., dispute not ended, but emergency abates).

Section 213, emergency boards. After the issuance of a proclamation the President may appoint an "emergency board." Originally prompt appointment of the board was mandatory. It was felt that flexibility and the element of uncertainty would be enhanced if appointment and timing of designation were discretionary. As indicated above, the existence of such a board and the issuance of recommendations by it are prerequisites to changes in wages, hours, and the like during Government operation. Depending, primarily, upon whether the economy was in an inflationary or deflationary phase, one side or the other would desire changes from preseizure conditions. Uncertainty here would operate against the side which desired a change. Now and in the foreseeable future, this would be the union party.

As under the present Taft-Hartley Act (sec. 207) the Board is empowered to conduct its operations throughout the United States. It is given the subpena power by making applicable sections 9 and 10 of the Federal Trade Commission Act. Those sections prescribe the scope of the subpena power, but do not provide for other than personal service. It is an open question whether the power given in section 5 (f) of that act is imported by reference so as to permit service by registered mail and telegraph. Rather than leave that question unresolved as it currently is, the bill specifies that section 5 (f) also applies to subpenas and other papers.

As explained above, it was decided not to vest the emergency board with authority to mediate. It seemed unnecessary to specify its duration. This should be within the discretion of the President.

Provision is made for preserving board records with the Mediation and Conciliation Service.

Originally, it was provided that a separate board should be appointed for each dispute. In some instances it might be wise to have a new board composed of men with special experience in a given technology (e. g., mining) or a special industrial problem (e. g., health funds). Other circumstances might make desirable the use of the same board for a series of disputes to achieve uniformity and to capitalize upon accumulated experience. It was decided that Congress lacks prescience sufficient to determine in advance the nature of the board required at any given time. The only limitation was to exclude as members of a board those who are officers or employees of the disputants. This test was substituted for "interest" in the dispute which was deemed too vague.

Section 214. (a) President to designate Government agency to operate facilities.

(b) As noted above, Government possession is to terminate—

(1) on settlement of dispute;

(2) when President finds continued possession not necessary;

(3) sixty days after issuance of a seizure order unless Congress extends by concurrent resolution.

(c) Just as other sections are designed to create an incentive to a union disputant to bargain and settle, this subsection would generate pressure upon employer disputants. During the first 30 days following the issuance of a seizure order income would be the same as if the Government were not in possession. After the first 30 days, the Government would impound and hold all revenue and would be reimbursed for its operating expenses. The owners of the enterprises would be entitled to just compensation. Certain standards for computing just compensation are defined. Consideration is to be given to the fact that possession was taken or continued when operations were disrupted or about to be disrupted by a stoppage of work or operations; to the fact that Government possession would have been terminated whenever the dispute was settled; to the value the enterprise would have had if the Government had not taken possession. Absent such standards compensation would be all income less actual operating expenses without figuring in the expenses of the Government. Without the factors prescribed, a company whose property is operated by the Government would experience no financial hardship and, indeed, seizure would insure it against any loss it otherwise might suffer. This feature was not contained in any other seizure proposal. The committee considers it an essential ingredient of this type of legislation.

In the bill as introduced the holding of funds and the application of the compensation factors was to date from the beginning of Government operation. It was suggested that a period be allowed in which the anticipation of these provisions would create the desired incentive to settle. The actual application of these provisions, it is felt, will tend to make continued Government possession undesirable to management.

In the bill as introduced a factor to be weighed in determining just compensation was which party rejected an emergency board's recom-

mendations. If the company did, its compensation would be diminished accordingly. If the union did, the fact that possession was taken or continued because of a threatened strike would not weigh as heavily, if at all, against the company. The effect upon the other factors would be similar. This provision was eliminated because it was considered tantamount to compulsory arbitration. Rather than encourage bargaining, it would encourage one party or the other to insist upon the precise recommendations of a board.

While the recommendations would serve as an excellent point of departure for bargaining, it is not intended to have this bill erect a scheme for imposing conditions for the settlement of emergency disputes.

Any increase or change in computation of compensation which results in an increase may be agreed to retroactively for all or part of the period of Government possession. This proviso makes clear that the increase for all or part of the period of possession could be treated as costs or expenses for that time.

In computing just compensation the increase would be allocated as costs or expenses for the period for which they are to be retroactive. The owners could pay the prorated retroactive increase from the funds held by the Government for that period rather than from income received before or after Government possession. Of course, if an increase is to be retroactive to a time before seizure or the date of impounding, that increase for the earlier period could not be charged off as a cost or expense for the period during which funds were impounded. This provision is for the protection of the owners and to remove doubts that might preclude or discourage retroactive increases which otherwise would be negotiated.

(d) The duty of all parties to bargain collectively is to continue during Government possession. This merely emphasizes existing law. The one change which appears rectified a typographical error.

(e) (1) The President is authorized to appoint a compensation board which would determine just compensation under the standards prescribed in section 214 (c). Appointment of a board is not required. If a Board were not appointed, the standards would govern negotiations between the Government and owners and any subsequent court test.

(2) Provides for clerical and other facilities for compensation boards.

(3) The award of the compensation board would be binding upon the parties unless a party to the award proceeding moves to have it set aside or modified in the United States Court of Claims.

Section 215. After a dispute is settled the President is to submit a comprehensive report and any recommendations he may have to Congress. Experience may indicate the advisability of amendments. The reports would constitute a rich source of material on industrial disputes.

Section 2 of the bill provides that the act would become effective immediately upon enactment.

Section 3. At the time of its introduction the bill provided that the emergency board provisions would not apply to existing disputes and that a board of inquiry already appointed under section 206 of the LMRA, 1947, would be deemed to be an emergency board for the purposes of this bill. These provisions were designed to cover a

contingency which has not materialized, i. e., invocation of Taft-Hartley emergency dispute procedures, and were eliminated as unnecessary.

Section 4. This section of the bill as introduced provided that the bill would not apply to any matter subject to the Railway Labor Act. Present section 212 of the Taft-Hartley Act which would be retained as renumbered section 217 so provides. Section 4 is therefore unnecessary.

CHANGES IN EXISTING LAW

In accordance with subsection (4) of rule XXIX of the Standing Rules of the Senate, the changes in existing law are as follows:

1. Present sections 211 and 212 of the Labor Management Relations Act, 1947, as amended, are renumbered as sections 216 and 217.

2. The bill inserts new sections 211 through 215.